

- I. Promise of the Administrator - EPA FY 2011-2015 Strategic Plan (SP)
- II. Unfulfilled promises in official communications
- III. Ignored letter to John Chamberlin, Chair, Arkansas Pollution Control and Ecology Commission (APC&EC) as delivered by Hon. Charles Moulton, Administrative Law Judge, APC&EC, not acknowledged or answered by APC&EC or ADEQ
- IV. ADEQ & EPA: resolve and unify Arkwood Superfund Site H2O Remedial Goal for pentachlorophenol contamination levels
- V. Suggestions for EPA improvement
- VI. New Conceptual Site Model
- VII. Comments and questions on EPA "draft of the corrected deed notice"
- VIII. Arkwood Land Revitalization
- IX. Liability concerns
- X. Close Out / Deletion
- XI. Discontinuance of on-site H2O injection "pilot study"

- I. Promise of the Administrator - EPA FY 2011-2015 Strategic Plan (SP)
 - A. *"To follow the Administration's focus on strengthening programs and achieving results, the EPA is implementing near-term Priority Goals that serve as key indicators of progress toward our five strategic goals. We will continue to affirm the core values of **science, transparency and the rule of law** in addressing these priorities. These are the most urgent issues we must confront through 2015"* (Emphasis added)
 - 1. Lisa P. Jackson, p. 1, "Message from the Administrator," Fiscal Year 2011–2015 EPA Strategic Plan, Achieving Our Vision, U.S. Environmental Protection, Agency September 30, 2010
 - B. Strategic Goal 3 (of 5 in SP): "Cleaning Up Communities and Advancing Sustainable Development"
 - 1. Objective 3 (of 4 under Goal 3 in SP): "Restore Land"
 - a) "In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, **EPA has initiated the Integrated Cleanup Initiative (ICI)**, a multi-year effort to better use the most appropriate assessment and cleanup authorities to address a greater number of sites, **accelerate cleanups, and put sites back into productive use** while protecting human health and the environment." (Emphasis added)
 - b) "**As part of the ICI**, EPA will develop a **new suite of performance measures** that will **support comprehensive management** of the cleanup life cycle by addressing three critical points in the cleanup process—starting, **advancing**, and **completing site cleanup**." (Emphasis added)
 - c) "EPA is also implementing its Community Engagement Initiative designed to enhance our involvement with local communities and stakeholders so that they may **meaningfully participate in decisions** on land cleanup, emergency response, and management of hazardous substances and waste." (Emphasis added)
 - d) "The goals of this initiative are to **ensure transparent and accessible** decision-making processes, to **deliver information** that communities can use to participate meaningfully, to **improve EPA responsiveness** to community perspectives, and to **ensure timely cleanup decisions**." (Emphasis added)
 - C. Questions pertinent to above:
 - (1) **Has ICI been implemented for Arkwood Superfund Site?**
 - (2) **Has Community Engagement Initiative been implemented for Arkwood Superfund Site?**
 - (3) **Describe EPA ICI performance measures regarding Arkwood for:**
 - (a) **accelerating cleanup**
 - (b) **advancing site cleanup**
 - (c) **completing site cleanup**
 - (d) **putting site back into productive use**
 - (e) **supporting comprehensive management**
 - (f) **enhancing EPA involvement with local communities**

- (g) **delivering information**
- (h) **ensuring transparency and accessibility**
- (i) **improving EPA responsiveness**
- (j) **ensure timely cleanup decisions**

- II. Unfulfilled promises in official communications:
 - A. Letter dated November 15, 2006 from Devine to Arkansas State Representative Charles L. Ormond
 - 1. "Based on all available information, **I see no reason the site can not be redeveloped and placed back into productive use.** As we have discussed, this would allow Boone County's economic development agency to market this site for future industrial uses."
 - B. Letter dated November 4, 1989 from Myron O. Knudson P.E., Director, Superfund Division, EPA Region 6 to Judge Dale Wagner of Boone County, Arkansas
 - 1. "**However, cleanup of the groundwater New Cricket Spring, is anticipated soon. As soon as this happens EPA plans to delist the site from the NPL and return it to productive use.**"
- III. Why was my letter May 16, 2012 to John Chamberlin, Chair, Arkansas Pollution Control and Ecology Commission never acknowledged or answered?
 - A. Delivered via Hon. Charles Moulton, Administrative Law Judge on moulton@adeq.state.ar.us
- IV. ADEQ & EPA: resolve and unify Arkwood Superfund Site H2O Remedial Goal for pentachlorophenol contamination levels and address following inconsistencies:
 - A. "Estimated Environmental Concentrations (EECs) for surface water have been calculated by the Agency. Drinking water levels of concern (DWLOCs) for acute and chronic dietary risk from drinking water were calculated. DWLOCs calculated for surface water for pentachlorophenol were **10,465 ppb for adult males and females and 2,990 ppb for children** ages 1-6." (Emphasis added)
 - 1. Frank T. Sanders, Director, Antimicrobials Division, EPA, in the Reregistration Eligibility Decision for Pentachlorophenol, September 28, 2008 EPA 739-R-08-008
 - B. "Organisms in the effluent discharge stream experience chronic exposure, therefore; the **chronic standard of 15.57 ug/l is the appropriate standard for the Arkwood Site.**"
 - 1. Sarah Clem, ADEQ Branch Manager, Water Quality Planning, Water Division, ADEQ to EPA Region 6, letter of February 14, 2012
 - C. "According to the email from Jean Mescher, McKesson, dated October 3, 2012 provided with the subject report, samples cannot be obtained 20 feet downstream from the weir as requested by ADEQ during periods of low flow since the effluent 'sinks into the subsurface before reaching the culvert'. This statement describes the effluent returning to a subsurface status and therefore returning to the state of groundwater. For this reason the **Maximum Contaminant Level (MCL) for pentachlorophenol (PCP) of 1.0 ug/l should be used in lieu of the aquatic toxicity standard of 15.57 ug/l which is currently used.**"

1. Mark Moix, Engineer, PE, Technical Branch, Hazardous Waste Division, ADEQ in a certified letter dated November 6, 2012 to Ruben Moya, RPM Superfund, EPA Region 6 (Emphasis added)
- D. "During the review, it was noticed that the ADEQ water quality standard of 15.57 ug/l is apparently being used as the screening level for PCP in lieu of the MCL of 1.0 ug/l. However, this standard pertains to aquatic toxicity only and does not address **potential human health concerns**. Even as it is apparently assumed that the stream is **not a source for potable water**, the **MCL of 1.0 ug/l should be the applicable screening level** for the following reasons:
 - Much of the groundwater which rises from the spring and becomes surface water returns to groundwater and **appears to migrate offsite, as groundwater**
 - According to past correspondence, it appears the consensus of the EPA, ADEQ and McKesson, that **some groundwater is circumventing the spring and migrating beyond** the spring as groundwater."
1. Mark Moix, Engineer, PE, Technical Branch, Hazardous Waste Division, ADEQ in a certified letter dated November 6, 2012 to Ruben Moya, RPM Superfund, EPA Region 6 (Emphasis added)
- E. "At this time, **ADEQ has not adopted the Human Health Criteria** in EPA's National Recommended Water Quality Criteria for Pentachlorophenol."
1. Annette Cusher, P.E., Remedial/Corrective Action Engineer Supervisor, Technical Branch, Hazardous Waste Division, ADEQ in email to Charles Grisham, Junior dated July 28, 2010
- F. Please see attached support documentation on separate DVD
1. My email of August 22, 2013 to Stephen Tzhone, with nine (9) attachments
- V. Suggestions for EPA improvement (supporting documentation appended by CD)
 - A. Compare website for Arkwood reporting to that of Koppers Oroville Plant (R9)
 - B. Refine FOIA request/response process
 - C. Create marketplace for RfR sites on EPA website, assist owners with marketing
 - D. Address systemic failures that cost taxpayers money and hurt agency efficacy
 - E. Proactively engage the community, economic development commissions, government, and private industry at the local, regional and state levels to assist in developing comprehensive solution for site reuse
 - F. Get better contractors (or, preferably, assume in-house responsibility and maintain with Federal salaried staff) for EPA public-facing website (epa.gov), including all public subdomains
 - G. Address the circumstances surrounding my FOIA request #R6-2013-003349, which became FOIA appeal EPA-HQ-2013-004621
 - H. Address the September 21-23, 2010 Superfund Information Systems "Customized CERCLIS/RODS Report Order Form (ROD)" issue
 - I. Address additional examples of unresponsiveness in documentation provided separately to EPA on CD
- VI. New Conceptual Site Model
 - A. "During the current 5 year review period, it is recommended that EPA Region 6 consider a re-review of existing site characterization data and information, the need to develop a more accurate CSM which advances the understanding of (1) the nature and extent of waste residuals that currently exist at the site, (2)

the ground water flow directions/patterns, (3) contaminant fate and transport, and (4) whether New Cricket Spring captures all of the contaminated water that emanates from the site. It is also recommended that a hydrogeologic investigation be initiated that includes the review of previous ground water investigations reports, remedial investigations, etc.

1. (13-R06-002) (S. Huling (GWERD) 580-436-8610) in Highlights, National Risk Management Research Laboratory Ground Water and Ecosystems Restoration Division Robert S. Kerr Environmental Research Center, Status Report for the week of April 22, 2013
- B. Clarify site's actual boundaries and legal description per the new conceptual site model
 1. Compare the following:
 - a) 1988 Consent Decree description (18.076 acres)
 - b) 1990 ROD maps and description ("approximately 15 acres")
 - c) "survey for McKesson Inc" dated 30 June 2009 with expanded boundary (30.74 acres)
 - d) EPA R6 aerial map with expanded boundary created 17 November 2009 (30.74 acres)
- C. Can site area boundaries be reduced in size as result of new Conceptual Site Model?
- D. Result of the site's reassessment for dioxin risk
- E. Besides dioxin & pentachlorophenol, what other chemicals are of concern at Arkwood?
- F. Details and outcomes of any other studies performed for all media
- VII. Comments and questions on EPA "draft of the corrected deed notice" received August 27, 2013 from Gloria Moran, Assistant Regional Counsel (6RC-S) Superfund Branch, U.S. Environmental Protection Agency
 - A. What is the legal definition of "groundwater" for these purposes?
 - B. No drinking water (wells or otherwise) were ever documented as contaminated
 1. City water supply was built as a precaution
 - C. Suggested changes:
 1. paragraph 6 "Soil Contamination" should say "...concentrations that **do not** allow..."
 2. paragraph 7 "Groundwater" add "**Property Owner shall have no responsibility whatsoever for the mouth of New Cricket Spring, where water remedy is in effect, as the mouth of New Cricket Spring is physically located off of the subject real property.**"
 3. paragraph 7 "Groundwater" add, "**Existing deep wells on site are not considered groundwater for the purpose of this IC and are therefore not limited or restricted hereby.**"
 4. paragraph 8 "Engineering Controls" Find more definitive and limiting language to specify these controls exactly
 - a) more specific and limited than "...certain engineering controls including..."
 5. paragraph 8 "Engineering Controls" replace "for at least 30 years following the completion of remediation" with "**until December 31, 2025.**"

6. paragraph 8 "Engineering Controls" ii) "maintaining the topsoil and grass cover" add **"except the owner may remove the topsoil and grass cover by providing a replacement concrete, asphalt or other compacted material cover acceptable to US EPA."**
7. paragraph 12 "Monitoring and Maintenance, etc." iii. "Certify in writing to the USEPA, etc." replace "for at least 30 years following the completion of remediation" with **"until December 31, 2025."**
8. paragraph 14 "Notices" i. add **"except said notice is not required when the property is conveyed to a beneficiary of the estate mentioned above."**

VIII. Arkwood Land Revitalization

- A. What is the timeframe for Arkwood's return to productive use?
 1. Built into new Conceptual Site Model?
- B. Status of SWRAU certification
- C. EPA affirms Casey Lockett-Snyder's statements:
 1. "Otherwise stated, EPA concurs that Arkwood Inc. Superfund site is ready for industrial reuse."
 2. "The current property owner has advised EPA that he is looking for potential purchasers for the Arkwood Inc. Superfund site property and EPA supports efforts to bring the site into industrial reuse."
 - a) Letters of February 28, 2012 from Mr. Lockett-Snyder to J. Michael Norton, Executive Director, The Northwest Arkansas Economic Development District, Inc. and March 19, 2012 from Mr. Lockett-Snyder to Clyde Rhodes, Hazardous Waste Division Chief, Arkansas Department of Environmental Quality (since replaced now by Tammie J. Hynum)
- D. Status of determination of RfR effort
 1. as per "Guidance for Preparing Superfund Ready for Reuse Determinations (OSWER 9365.0-33-D)"
- E. Does Arkwood meet both the "PFP" and "RAU" measures?
 1. as per "Guidance for Documenting and Reporting Performance in Achieving Land Revitalization" (OSWER 9200.1-74)

IX. Liability concerns

- A. What is financial "threshold" for EPA to pursue the assets of a PRP?
- B. Exempt proceeds of any sale of Arkwood site from claim or garnishment?
- C. Self-implementing aspect of Brownfield protections for BFPPs is intimidating
 1. Other assurances possible for BFPPs?
 2. If agreement regarding the cleanup is complete and satisfied between parties, could EPA covenant with McKesson or other PRP promising not to sue?
 - a) as per Ms. Moran in telephone conversation of March 25, 2013
 3. de minimus/ de micromus or other provision to release my father as PRP from liability forever?
 4. Where do beneficiaries of estate who come into ownership of superfund site stand in liability chain?

X. Close Out / Deletion

- A. as per Close Out Procedures for National Priorities List Sites (OSWER Directive 9320.2-22 May 2011)
 - 1. "Deleting a site from the NPL requires a **modification to the Code of Federal Regulations**. To perform this task, the Administrative Procedure Act requires formal administrative rule-making procedures which include creating a docket, publishing notices in the Federal Register, and holding a formal public comment period." (5.4 "The Deletion Process")
 - B. Has Mr. Sanchez written to ADEQ requesting their concurrence that the Arkwood Inc. Superfund site (EPA ID: ARD084930148 Site ID: 0600124) be submitted for partial deletion from the National Priorities List?
 - 1. "The first step involves EPA sending a letter to ADEQ requesting their approval to delete the site. CAS"
 - a) November 25, 2011, email to CCGJr from Carlos Sanchez
 - C. Is Arkwood a candidate for Direct Final/ Direct Deletion/ Direct Final Rulemaking Process?
 - D. When will US District Court relinquish jurisdiction?
 - 1. "Retention of Jurisdiction," Consent Decree, 1988
 - E. What other loose ends must eventually wrap up for closeout/ deletion?
 - 1. Petition to amend?
- XI. Outcome of the discontinuance of on-site H2O injection "pilot study" and recommendation for the "study" going forward
- A. Was sufficient data gathered to account for wide variations year-to-year of rainfall, other variables not analyzable in short term?
 - B. Resolve following discrepancies:
 - 1. On May 10, 2012 I wrote to Carlos Sanchez and said:
 - a) "I would like to draw your attention please to Jean Mescher's statement in her March 9, 2010 letter to EPA under IV. PROBLEMS ENCOUNTERED OR ANTICIPATED:
 - (1) **'None. Discontinued operation of the pilot system does not appear to have a detrimental effect on the concentration of PCP at the spring mouth.'**
 - b) On May 11, 2012, at 10:56 AM, Carlos Sanchez wrote:
 - (1) "Thanks Curt for the information, **This will help in making the decision to continue the pilot project.** Last week we requested that McKesson conclude this Pilot Project and prepare a report on the result of the pilot test. EPA believes that McKesson has sufficient information to make an evaluation."
 - c) Compare and contrast the following two official statement by McKesson in reporting to EPA:
 - (1) "The increased flow through New Cricket Spring since initiation of the pilot system for injection of ozonated and non-ozonated water into the flow channel of New Cricket Spring **is believed to have enhanced** the degradation of PCP." (Emphasis added)
 - (a) From "2011 Annual Report Arkwood, Inc." prepared on behalf of McKesson Corporation

- (2) “Discontinued operation of the pilot system **does not appear to have a detrimental effect** on the concentration of PCP at the spring mouth.” (Emphasis added)

(a) Jean A. Mescher, Project Coordinator, Director, Environmental Services, McKesson in letter of March 9, 2010 to Shawn Ghose, EPA Project Coordinator

C. Will onsite injection operations cease permanently?

1. remove apparatus
2. fill and seal wells drilled onsite by PRP
3. repair soil cap disrupted by this “pilot” at the site of contamination